

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
NOVEMBER 1, 2005**

5805

CALL TO ORDER

Mayor Bernard called the 1969th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Deborah Barnes	Joe Loomis
Susan Stone	Carlotta Collette

Staff present:

Mike Swanson, City Manager	Grady Wheeler, Information Coordinator
Gary Firestone, City Attorney	Paul Shirey, Engineering Director
Kenny Asher, Community Development/Public Works Director	Stewart Taylor, Finance Director
JoAnn Herrigel, Community Services Director	

PLEDGE OF ALLEGIANCE

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND
AWARDS**

- A. ***Emergency Responder Appreciation Week Proclamation*** November 20, 2005 through November 26, 2005.
- B. ***One Baby at a Time Proclamation*** Milwaukie Providence Hospital.
- C. ***Metro Growth Projections***

Metro Councilor Brian Newman discussed the most recent 2030 growth projections that indicated an additional 1.1 million people moving into the in the region in the next 25 years. At this time there were about 2 million people living in the four-county area. He discussed the 2040 Plan and the need to update it as well as the Regional Transportation Plan (RTP). The elements of the final growth management plan included urban growth boundary (UGB) expansions, more efficient use of land within the existing boundaries with a series of centers, and shifting more growth to neighboring cities.

The themes were a strong central city with Portland as the hub. Outside of that there were town and regional centers that were walkable, vibrant, mixed use areas that served as hubs to the surrounding neighborhoods. In most cases these were linked by transit. Other important themes were protection of industrial zoning, protection of rural areas to ensure green corridors, nature in the cities, and a balanced transportation

system. People would have more options to ride transit, bike, and walk. The Metro Council adopted the 2040 Plan in 1997, and the affected jurisdictions subsequently adopted theirs over the next five years. He reviewed the population conditions between 1970 and 2000 and noted the 2040 projections would be reached by 2020. The 2040 job numbers would be hit by 2015. While unemployment was high, jobs were growing and outpacing the rest of the country.

The question was would the region grow in the right direction. He indicated those areas added to the UGB in the past few years. There was also a lot of vacant land in urban areas that had been bypassed before, and development was a big concern for residents and neighborhoods. Some areas such as downtown Milwaukie where redevelopment was desirable, it made sense, but in the neighborhoods there was a concern about preserving character. He pointed out sites where the land was more valuable than the structures, so there were teardowns and redevelopment or where people would subdivide lots.

Councilor Newman discussed the UGB expansion and the hierarchical system under which it was done. After urban reserves, the first priority was non-resource land or rural residential areas like Damascus and Beavercreek before going to resource lands that were actually being farmed. Most of the exception land was what the state said had to be used before resource land was found in Clackamas County. He pointed out the boundary expansions that occurred incrementally along the edge for about two decades and the 2002 expansion to Damascus.

Based on growth projection, the Metro Council asked staff to come up with a likely scenario based on current state law and Metro policy. Most of the growth would occur on the southern tier of the region including the Stafford Basin, Pete's Mountain, Oregon City, and Boring. Most of the job growth would be in the crescent from Wilsonville, up I-5, and out to Hillsboro. The concern was that based on current policies and models was that most of the new housing would be in one part of the region and jobs in another part putting even more stress on the transportation infrastructure.

The Metro Council would update its Regional Growth Plan and RTP beginning in January as well as going to the legislature to ask for more tools for managing growth to avoid some of these implications. Questions were: how do we continue to create great communities within the UGB in places like Milwaukie? How do we pay for it and who pays for it. When we have to expand, where do we expand? Can we get more flexibility from the state to put more housing where the jobs were? Are there places where growth should be off limits under any scenario? He encouraged people to join in the process and noted he would make a presentation to the NDA leadership on November 14.

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Collette to approve the Consent Agenda:

- A. City Council Regular Session Minutes of October 4, 2005;**
- B. Amendment to IGA with Oak Lodge Sanitary District for the Provision of Internet Services;**

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C. Resolution No. 51-2005: A Resolution in Support Clackamas County's Recommendations to Metro Related to the 2006 Regional Greenspaces Bond Measure; and

D. OLCC Application for J&J Little Store, 2936 SE Washington Street.

Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Kellogg Lake Transit Center Site Deed Issue

Mayor Bernard said this was not a hearing about the transit center but about a commitment made by the City years ago that the City had not fulfilled. The decision was whether or not the City Manager should speak to the property owner.

Mr. Swanson did not go into the history leading to the designation of the Kellogg Lake site as the transit center. About three weeks ago Mayor Bernard informed him he had been contacted by Dena Swanson who requested information as to why the property that she and her husband Norman Swanson had conveyed to the City in 1991 was not named after her first her find husband Mr. Kronberg. At that point, he went to the real property file and found the bargain and sale deed that indicated the property was conveyed to the City, the "true and actual consideration...paid for this transfer stated in terms of dollars was \$38,000, together with the payment of real property taxes in the amount of approximately \$7,865.22 together with interest if any together with other property of value given or promised, all of which is the whole consideration." That was the document later recorded. The deal went into escrow pending a level 1 environmental assessment. It was placed in escrow and consummated March 1992 after the City approved the environmental assessment. In the real property file, he also found a letter dated December 27, 1991 to Mr. and Mrs. Norman E. Swanson which recounted in four paragraphs what the deed said which was the purchase price and the real estate taxes. That was followed by a sentence, "In addition, the City is purchasing the property for use as a public park and agrees to name the park to reflect the Kronberg name." That letter was signed by Dan Bartlett, City Manager, and by Norman Swanson and Dena Swanson with Dena Swanson being the person who executed the deed. He contacted the city attorney because he had concerns about the language regarding use as a public park and the effect that would have on the transit center. It was an intent expressed by the City and has used the property, in effect, as a park since 1992. Operations and maintenance was transferred to the North Clackamas Parks and Recreation Districts (NCPRD) pursuant to the agreement that transferred all City parks and open space to the District. The agreement with the District provided that "the City retains the deed." The agreement also provided that if the District wished to rename a park, it had to secure the approval of the City. The name of the park used in that instrument was Kellogg Lake Park. The name had not changed, and he knew through the transit center process that the name had also not been altered. The city attorney said at that time it was unclear that the language would create a deed restriction that would create an argument that the intent of the parties at the time was

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that the property be used as a park. He had not been told that definitely created a restriction on the deed. More disturbing to him was the fact that the City had made a clear commitment to name the property and had not done so. He called Ms. Swanson at that time about the naming issue and apologized for what had happened because he felt it was clear in the language. He told her he would look into it and would prepare options for naming the property and would discuss it upon her return. They also discussed the use of the property of which she had become aware when she read a newspaper article about the transit center siting issue. He asked her at the time if that would be an issue they could discuss in the future, and she agreed. She talked about the efforts her husband had undertaken in downtown development, and she felt it was an issue that was in line with some of the things he had talked about. He did not talk about a specific proposal because the conversation revolved more around the naming issue.

Mr. Swanson discussed this potential with the City Council in executive session. One question was whether the City should continue to pursue the naming issue. That was a commitment he felt the City should follow through on. The other question had to do with the language regarding the property's use as a public park. It did throw something of a cloud over the property and its potential use as a transit center. It was not a deed restriction but did indicate the intent of the party. The City Council voted 3 – 2 in September 2004 that this was the recommended site. Because that site was recommended, should the City take action in talking to Ms. Swanson about conforming the intentions of the parties if she was amenable to a use that would allow it to be considered for the transit center. Ms. Swanson called him today and touched on the use issue and indicated she was amenable to discussing that. He was seeking direction on what to do with both the naming issue and the use of the property that would be consistent with the recommendation City Council made on September 21, 2004.

Mayor Bernard asked what the City got when it asked for a title search.

Mr. Swanson said if the City had asked for a title search, it would not have gotten the information back that was contained in the letter. The letter was not recorded, and he understood it was in instrument that could not have been recorded.

Mr. Firestone commented it was not in a form that anticipated it recording.

Public comment

- **Rep. Carolyn Tomei, 11907 SE 19th Avenue, Milwaukie**

Rep. Tomei was upset when she read the article in *The Oregonian*, so she called Ms. Swanson and had a very nice conversation. She obviously knew about the transit center and talked at length about her husband being in business in Milwaukie and owning property in and around the Milwaukie area. She was also incensed that there were comments about the fill at the Kellogg Lake site being bad fill. Some people had even said there were even refrigerators there, and Ms. Swanson said that was completely untrue. At one time they had tried to sell the property for some kind of development before the agreement with the City. The fill was found to be adequate for development on the site. She knew about the transit center and said the article was not true and that she was not opposed to the transit center going in at that site. She said if

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her husband were alive, he would be happy with the development that would probably be caused in downtown Milwaukie. Her main concern was that something be named after Mr. Kronberg. He owned a car dealership on the property the City eventually owned. Ms. Swanson was apparently aware of the bridge that would be built from the Kellogg Lake transit center to downtown Milwaukie and commented that bridge could bear his name. She made it clear that she was not opposed to the transit center or would her former husband have been.

- **Ed Zumwalt, 10888 SE 29th Avenue.**

Mr. Zumwalt was puzzled by something Mr. Selinger said in his transit center update two weeks ago. Councilor Stone asked him why the buses at the City Hall transit center could not be moved to Southgate temporarily. He replied the buses would be too heavy for the surface and that he had also applied for a park-and-ride grant only. It would not be used even for a temporary transit center. Mr. Zumwalt called Mr. Selinger on October 19 to ask specifically why he had applied for a park-and-ride grant when the locally preferred alternative was still officially Southgate – not Kellogg Lake. The environmental and engineering studies had not even begun at Kellogg Lake, so it seemed the cart was before the horse. He did state the South Corridor Steering Committee could change the locally preferred alternative (LPA), but he did not think that would happen in light of recent developments. He asked for the paperwork on the grant request that Mr. Selinger agreed to send, but Mr. Zumwalt had not received it yet. He also asked for an educated guess about light rail coming to Milwaukie, and Mr. Selinger said it would be 9 – 10 years. He was willing to guess even that would not be met. That would mean all the beautiful promises and all the blue sky scheduled for Phase II was still light years away. Council action to pursue the LPA for Kellogg Lake chewed up two more years, and there would be at least two more before Phase I was done if even then. All that time the transit center would still be around City Hall. That was not helping development in any way. Now we have a new legal, ethical, and moral dilemma. How this angst-laden situation came about escaped him. There were only two ways this could have happened -- lack of due diligence or with full knowledge and intent to deceive. He did not think the later could happen. It was time to walk away to realize this was not meant to be. It was dedicated and intended to be a park. It is a park and would remain a park and be developed. To pursue the site as a transit center now would be unconscionable to say nothing of a huge scam on the people of this town. He was weary of being angry and tilting at windmills. He was not the only one with those feelings, but people were not going to leave it alone. It was time to do some soul searching and doing the right thing – to move forward with an open attitude pressing for a transit center at Southgate preferably but without ignoring the ODOT site. He thanked the Council for making him feel so at home – no one listens to him there either.

- **Larry Lancaster, 10505 SE 55th Avenue.**

Mr. Lancaster hoped to make a number of cogent comments addressing the futility of pursuing the Kellogg Lake site because of issues related to TriMet. He understood the City Council did not wish to hear comments about the transit center but on the deed issue.

Mayor Bernard said there needed to be an environmental analysis before this was considered further, and the South Corridor group had not adopted it. The issue at this meeting was whether the City Manager should speak with Ms. Swanson.

Mr. Lancaster said there was a lot of information as to why pursuing it was futile because TriMet would not be able to deliver on the Kellogg Lake site. He reviewed the 90-page Council handout, and there were a lot of important issues regarding the whole transit matter. Specifically this deed and whole situation was extraordinarily troubling. The City made this commitment nearly 15 years ago. He still did not have a clear understanding as to why this restriction – which should have been a deed restriction – was never recorded or why the letter was never recorded. It was either incompetence or negligence. For the City to only discover it now, he recalled in his testimony in the decision-making process for the siting at Kellogg Lake that he had heard there was a problem with the property and a requirement that it remain a park. He did not have the documentation, but now it was here. How could the City not have both a legal and moral obligation to execute on the agreement and make this a park and name it Kronberg Park?

He had a great deal of respect for the City Attorney Mr. Firestone, and he provided very clear information. Mr. Lancaster read from page 28. The general rule in real estate property law was that negotiations be merged into the deed. This should have merged into the deed and become a restriction. The attorney said Oregon allows the parties to go beyond the deed and look into the intent. Was there any question at all as to what the intent was? It was a park – not a transit center. He assumed that Mr. Swanson was deceased. Did his intent not count when this agreement was entered into? He hoped the City would not add to its list of mistakes a disregard and disrespect for the deceased. He questioned whether or not Ms. Swanson had a legal standing. It was not about what her wishes were now or how the City could convince her differently. It was about the City's failure to execute. Because of that, as the City Manager pointed out, it would create a cloud on this property. If one knew anything about federal funding, and TriMet certainly did because that was where all the money came from, then the feds would not authorize an expenditure on a piece of property that had a cloud on it. The people living on Kellogg Lake hired an attorney early on in the process. If ever he saw a solid place for a lawsuit this would be it. Did the City budget money for a protracted lawsuit over this real estate transaction? It seemed that if the City failed to do the right thing on this property there would be far-reaching, deleterious ramifications for the City. If the City did not execute on this agreement, how could any resident in Milwaukie or the regional partners ever trust the City again. The City's word meant nothing. The City would just twist it and make it mean something else later on when it suited. The City worked very hard for the last several years to regain the trust of its citizens. His biggest fear was that if the City did not do the right thing and honor the agreement and create a park, the it would irrevocably damage the credibility of this Council and many Councils to come. That would put the City right back to square one – right when the City was trying to develop the downtown and create economic vitality. Mr. Lancaster could tell the Council with certainty that developers with the big money were not going to invest in a community that was in political turmoil. This issue would not go away. It was clear it was not going to stop any time soon. This all assumed that TriMet could deliver on the

Kellogg Lake site. There was a plethora of information that was new since the decision was made a year ago that spoke clearly that this was not doable.

In conclusion, in his six years on Council, one of the most important things he learned was that the Council made decisions as leaders based on best information at the time. Over the course of time facts changed and conditions changed. It took true leaders to recognize when they needed to make appropriate corrective decisions under the circumstances for the greater good. He hoped this Council would have the courage and foresight to abandon the Kellogg Lake siting and pursue a more kindly and viable alternative like the ODOT site or back to the original charge of mitigating the LPA at Southgate. In the meantime, the City needed to get the buses out of downtown and down at Southgate until a decision could be made.

- **Dolly Macken-Hambright, 12258 SE Grove Loop.**

Ms. Macken-Hambright asked the City Council to recall discussions about the Milwaukie Pioneer Cemetery. It was deeded to the people of the City of Milwaukie as a cemetery. They collectively, with Mr. Swanson, squared away and got it back to the initial intent that it was deeded to the people of Milwaukie and it was set up with trustees. It was now back to the original intent. She saw no difference between the issue with the Kellogg Lake Park and the intent of the individuals that set it up as a park to begin with. She thought, as Mr. Lancaster said, that it was unconscionable not to follow through with the intent of the individual who set up the program to begin with.

- **Les Poole, 15115 SE Lee, Oak Grove.**

Mr. Poole handed out a packet to the Council.¹ He started with a small notebook on Kellogg Lake that had grown over time that was unfortunately also money. He endorsed Mr. Lancaster's comments. Today in *The Oregonian* there was an article about this situation. It indicated the City bought the property for \$38,000. The terms and conditions clearly stated that the purchase price was \$92,000 for lots 2800 and 3100 from the Kronberg family. In the document from the title insurance company dated March 13, 1992, it clearly said that a donation to the City of \$44,965 was made by the property owner. Adjacent to that property were tax lots 3200 and 4500 that were owned by his [Poole] family. His family came to terms with the City and made a \$22,000 donation on the same basis. The reason that \$64,000 was donated to the City was not for a transit center. In fact, they all knew why the donation was made. Some of those involved, particularly Councilor Loomis, with the situation at North Clackamas Park, recalled that the deed restriction on the equestrian area became a point of contention because it was going to be removed as part of the Park improvements. In its place was to be a soccer field. Unfortunately in the process, they discovered the agreement had to be honored. Suddenly, they found themselves trying to place a soccer field in the back of the park, which was a sensitive environmental area. This was no different. The recent discovery of the failure to record the deed restriction in effect eliminated the site for the potential of being a transit center. The property law did not allow for any provision to disregard terms and conditions of a sale. He did not believe there was any confusion ...² In 1991 prior to the City's purchasing the site, the owner submitted an

¹ Mr. Poole did not provide a copy for the record.

² Tape change; end of comment not recorded.

application to develop the property as Rep. Tomei indicated. The City wished to purchase the site. One would see in the documentation that the City was considering condemning. The only angle they had for condemning it was to use it as a park. He would continue his comments next week.

Councilor Stone wanted to listen to Mr. Poole's wrap up as what he said might be pertinent. This was a public hearing.

Mr. Lancaster made comments from the gallery regarding the length of testimony.

Mr. Poole said the city attorney prepared a memo regarding condemnation of the property for a specific purpose. The City Council was advised in executive session³ that if it wished to take position of the property it would have to declare that purpose. The court would grant immediate possession if it found the property would be acquired for public use. Everyone knew what that public use was and what it was to this day. Considering the time invested in this, there was no standing and no reasonable excuse or justification to request TriMet as the applicant and future owner of the property to take over this situation. He could not dream of TriMet taking over in light of what had happened.

Councilor Stone understood Mr. Poole to say that the City was trying to condemn that property and asked under what grounds that would have been done. Was it environmental?

Mr. Poole said at that time, which had changed under recent Supreme Court decision regarding condemnation, the property could only be condemned for a specific purpose such as a highway or park. The Planning Commission denied the application to develop the property and negotiated with the owner Ms. Swanson to go ahead and purchase it. Obviously, that was where this unrecorded letter entered into the equation. The concept prior to anything in the current agenda all along was to purchase the property as a park. That was why the parks department took over operations years ago.

- **Roger Cornell, 14805 SE Megan Way, Clackamas, former Milwaukie resident.**

Mr. Cornell said if the City Council had an ounce of honor, integrity decency, or conscience, then it needed to stand up and do what was right regarding the use of the land purchased from Mr. and Mrs. Norman E. Swanson. Putting aside your personal agenda and desires, there was but one ethical decision. Milwaukie entered into a binding agreement. The Council was obligated to honor the commitment the City of Milwaukie made to Mr. and Mrs. Norman E. Swanson agreeing to purchase their property for the use as a public park – not park-and-ride -- and to name the park to reflect the Kronberg name. The Council was also obligated to the citizens of Milwaukie who authorized it to spend tax dollars for this park.

Unethical behavior can never be defended. It's just flat out wrong. No matter how many ways you try to spin it, there was no justification to do anything other than what the City of Milwaukie agreed to do. There was no dilemma; there was a standing agreement. It was real and meant something. This property would never have been

³ December 27, 1991

under consideration for anything other than a park had these documents been produced early on. Please do not let your pride cloud your good judgment.

- **Greg Seagler, 2244 SE Lake Road.**

Mr. Seagler distributed a letter to Council. He addressed new information. The recent discovery of the 1991 agreement between the City of Milwaukie and Ms. Dena Swanson was only the latest reason we should reconsider Kellogg Lake as Mil's transit center. Because the need to improve the dangerous intersections accessing the Island Station Neighborhood at McLoughlin, River Road, and Bluebird Street, and 22nd Avenue was used as a strong selling point to the citizens of Milwaukie, the Planning Commission, and City Council for selecting the Kellogg Lake site as the location of the transit center. We now know that ODOT has had plans in place for up to several years to reconfigure those intersections to improve traffic flow and pedestrian access with projects that would require no local funding and are expected to be completed in 2007. He included a reference (Rick Keene) where he got that information.

Because we now know the City agreed to preserve the space after Ms. Swanson's first husband, a local businessman Robert Kronberg, at the time it was purchased from them, he asked the City Council to reconsider the recommendation. He urged the Council to honor the spirit of Ms. Swanson's intent as well as the spirit of honor bestowed to our open spaces and waterways identified in Milwaukie's Comprehensive Plan, City Charter, Downtown and Riverfront Land Use Framework Plan, and Downtown Design Guidelines. Those all specifically referred to not building transit centers on waterways.

He reiterated what he had told the City Council before. He urged the Council to honor the spirit of Ms. Swanson's intent. The park should be named after his late husband Mr. Kronberg. Milwaukie's Comprehensive Plan, Charter, Downtown and Riverfront Land Use Framework Plan, and Downtown Design Guidelines all specifically referred to not building transit centers on waterways. He was a strong supporter of public transportation and especially of light rail. He was encouraged to see the things happening in downtown Milwaukie and would actively work toward the goal of improving Milwaukie's transportation options because he agreed they were a vital part of a strong community and local economy. He simply believed the choices needed to be more environmentally sensitive than this one. As the Comprehensive Plan stated, the wise use and management of those resources were particularly important in Milwaukie because the City was almost completely developed, and few areas remained in a natural state. The protection of these natural resources was essential if residents were to experience the pleasures and amenities that could only be enjoyed when nature was close at hand.

He believed this was Ms. Swanson's intent when she sold her land to the City was to provide a place where nature would be close at hand. He asked that the Council reconsider building a transit center on Kellogg Lake.

- **Ray Bryan, 11416 SE 27th Avenue.**

Mr. Bryan said those who voted to make Kellogg Lake the LPA made a difficult decision. Many of the reasons that the Council and the Working Group based those decisions on were no longer valid. Recently we learned that the intersection at River

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Road and McLoughlin Boulevard had already been redesigned and would be built in 2007. TriMet's last presentation to Council reveals that the timeline for Phase I was vague, and the funding of the environmental impact study was incomplete.

One of the main reasons he opposed the Kellogg Lake location was because of the traffic it would bring through the neighborhood. It has several schools. Much of the traffic destined for a parking garage would be the same time as the kids were walking and driving to school. Given recent weather, that was not a good mix.

Last week he was doing research on the Internet and came across the anticipated transit times it would take to ride light rail into downtown Portland. It was predicted that Clackamas Town Center to Pioneer Courthouse Square would take 38 minutes. Milwaukie to Lincoln Station near PSU would take 18 minutes.

Suppose you were one of the thousands of potential new residents in the City of Damascus. You plan to ride light rail into downtown. In the near future, you would hop on the Sunrise Corridor Freeway. As you near I-205, you would have to decide whether to board light rail at the Town Center or to drive into Milwaukie and cut the train ride by half. For this reason he believed there needed to be a more convenient location for a transit center and parking garage, one that is north of Hwy 224 and is easily accessed by those arriving from the east. A transit center north of town will also bring people and potential customers through downtown Milwaukie who may stop and purchase goods and services on their way home.

Mr. Bryan asked the Council to consider leaving the Kellogg Lake location a park, Kronberg Park and direct focus for a transit center and parking garage to the north.

- **Terri Darling, 10987 SE 28th Avenue #B.**

Ms. Darling said the City was at a crossroads. What was decided about the Kronberg purchase and donation agreement would reflect to the larger community what Milwaukie is all about, whether we keep our word and honor our agreements. This decision would also determine if others would donate property or money for our Riverfront Park and other projects in the future.

This decision would determine how others view Milwaukie's government, its integrity, and reputation. This was an opportunity to change the reputation from a community at odds with each other to a community that works together to solve problems and honors their commitments.

She urged that the Council make the right decision. Honor the agreements made in 1991 and all other agreements pending. Let Milwaukie be known as a community that strives for resolutions that work for everyone, is responsible with the dedicated gifts entrusted to the City, and respects the decisions made by its predecessors. In doing so Milwaukie would continue to be a pleasant and beautiful place to live for future generations.

- **Davis Aschenbrenner, 11505 SE Home Avenue.**

Mr. Aschenbrenner thought naming the Kellogg Lake site should be done immediately. The second question Mr. Swanson asked should be pursued, and that he should have discussions with the former property owner and talk about the issue of a transit center

on the site. He did not believe at the time the property was sold that there was even a concept of the need for a transit center or its location on this particular site. He was a member of the citizens group that considered the options and put forward what it thought was the best option. There could be a park and a transit center on that site. The transit facility would be approximately two acres and the total site was 5 acres. The site provided the money to build the park, put in the trails, restore the riverbank, and plant the trees. He felt the decision from Council should be to name the park and to continue discussions with the former property owner.

- **Lisa Batey, 11912 SE 19th Avenue, Island Station Neighborhood Association Chair.**

Ms. Batey addressed the comments about ODOT's rebuilding River Road/McLoughlin Boulevard intersection. She received information from ODOT over the past months, and she expected a representative to speak to the Association at its November meeting. She understood the work would be a marginal realignment of the crosswalk and some safety issues would be addressed. A serious rebuilding of the intersection was not being planned as the Neighborhood had looked forward to for over a decade. ODOT had little money in 2007, and this was not the kind of change the Neighborhood wanted and supported when it voted in support of the transit center location. She endorsed Mr. Aschenbrenner's comments. She agreed with testimony to the fact that the City cannot ignore this letter even if it could legally because it was not the right thing to do. The right thing to do would be to clarify and discuss further with Ms. Swanson to determine if there could be some compromise use of the property that would fulfill her needs. Ms. Swanson was the widow and the suggestion that it was somehow improper to change the understandings because one of the donors died struck her as being very strange. The widow can act for the estate. She encouraged the City Council to ask staff to pursue the matter and move forward with the site.

Council Discussion

It was moved by Mayor Bernard and seconded by Councilor Collette to request that City Manager Swanson discuss the situation with the property owner.

Mayor Bernard agreed there was a moral obligation to get this matter resolved. He did have grave concerns and felt that if the property owner did not allow something else to be there, then the City should be responsible to that agreement.

Councilor Collette agreed. The conversation needed to be held and to shut down at this stage was inappropriate. The City needed clarification of Ms. Swanson's issues and concerns and how those might be satisfied.

Councilor Loomis thought the letter was clear. He took the testimony to heart. The only thing he differed with was that he thought staff did a great job in carrying out the process this City Council asked it to do. Unfortunately, this paper was not considered. There was eight months of hard work from staff, citizens, and business leaders. The only right thing to do was to honor the letter. He read e-mail that he received saying there was a responsibility to make amends with Ms. Swanson for the City's failure to keep the commitment, and she should not suffer any more discomfort over the City's mistake. If the City Council directed City Manager Swanson to talk to her about other alternatives ... he knew there had already been two people who talked to her. He

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assumed she was elderly. He voted in favor of the Kellogg Lake site. If the contents of the letter had been known at the time, he did not think that site would have been discussed. If he had known about the letter ... he recalled asking questions about it at the time. If he had known, he would not have voted for it. He recommended naming it Kronberg Park. It was right back in Council's lap, and a decision needed to be made about the transit center. The Council had plenty of information, and it was the Council's responsibility to fix it.

Councilor Barnes was concerned with the use of words pride, ethics, ego, integrity, reputation, and keeping our word and keeping commitments to not only this community but also the partners throughout the region. When the City Council first learned about this, her first reaction was anger at the former city manager. She did not understand why he, as a City leader did not follow through on a commitment he should have made by putting it in writing and in the proper place. She felt he had an obligation to address the City Council and the City as to why that was not handled properly. The issue with renaming the site was of utmost importance because 14 years have gone by since that was decided. She believed that name should be on the site. When it came down to the actual decision of what to do, before the City Council made a decision again, she believed Ms. Swanson should be heard. Not only by the City Council but also the community. It seemed one answer was in the paper today where the reporter said she had made a final decision. There were different sets of circumstances when others talked to her. Until the City had a chance to find out what Ms. Swanson really wanted ... which was more important than what others wanted Councilor Barnes wanted to hear it straight from her so she could make a final decision. Otherwise, she felt the City Council was shortchanging Ms. Swanson because it had not reached out to her to find out what she wanted for her husband's memory to best represent Milwaukie. She heard this woman's husband tried to make things happen and kept running into roadblocks. This was another roadblock for her. The City Council had not gotten a clear indication of what Ms. Swanson really wanted on behalf of her husband.

Councilor Stone said the issue before the City Council really had nothing to do with what Ms. Swanson thought now. The issue was an agreement – a binding agreement – that clearly states that the property was intended to be a park. It was gifted to the City. The City was not shortchanging Ms. Swanson in the least. But it was shortchanging the community and the citizens by not upholding that agreement. This was clearly a donation. There was no question in Councilor Stone's mind whatsoever when she read through the documents that the intent was crystal clear. It was meant to be a park. In fact, the City Council heard testimony tonight that Ms. Swanson's former husband Mr. Kronberg wanted to develop that site, and the City wanted to condemn it so it could be a park. The Council had an ethical dilemma before it and had a unique opportunity presented to it to act together – act unified and act as a team. The Council had not always done that, and tonight it had the opportunity to do the right thing – to stand up and say our word is good. It did not matter if it was 14 years ago, the Council should uphold it and do it together.

Many members of the Council voted to put the transit center on Kellogg Lake. The Council heard comments about putting agendas, egos, and so on aside. She took those comments to heart. She thought the Council needed to because the issue was

bigger than that, and the Council was bigger than that. There was a chance to prove that tonight. It was not like that was the only place that this transit center could go. There were a myriad of reasons why it should not go there. This one superceded them all. Councilor Loomis said it. If the Council had had this piece of documentation in front of it at the beginning of the process of trying to choose a site, then the Council never would have chosen it. She looked at this strictly as a business deal. If she were purchasing real estate as TriMet was supposedly going to do, if indeed it was going to be a transit center, then they would back away as she would because of the deed and letter of intent to keep the property as a park. It was called discovery. Whenever one made a real estate transaction, there was a discovery process. The City now discovered that it did indeed have a cloud over the site. She could not do anything but uphold that 1991 agreement, and she hoped the Council would do that together. It was the right thing to do. It spoke of integrity. It spoke of honor and the kind of people they are. She would vote against this motion. She did not think Ms. Swanson should enter into it. It was about what the citizens wanted. There was an opportunity to give them this park that was rightly theirs. It was rightly theirs.

Councilor Barnes asked the City Attorney if it was possible to postpone the vote.

Mr. Firestone replied it was always possible to continue a matter to a future meeting. The mover and the seconder could withdraw the motion, or there could be a general consensus that no one was going to call for the vote. The motion could be tabled to a future meeting.

Mayor Bernard would table the vote to the November 15 meeting but was not sure what would be accomplished by doing that. The City Manager would either talk to Ms. Swanson or not.

Mr. Firestone said it was a procedural matter ruled on by the chair, which was the Mayor. If any member of the Council disagreed, they could move to overrule the Mayor's procedural ruling that the matter was continued.

Councilor Stone asked Councilor Barnes her intent for holding the matter over.

Councilor Barnes replied she wanted some questions answered but not from Ms. Swanson.

Councilor Stone understood in terms of Council direction tonight, if the City Council chose to do that, she would like to deliberate this in a Council work session. It was something that had not been talked about. It was a very contentious issue that obviously divided the City and continued to fracture the community. If the Council was not going to make a decision, which she thought it should because people knew what the right thing to do, then she would like to have the opportunity to dialogue together about his situations. She would personally like to see the issue resolved so people could move on. The current LPA was Southgate, and the transit center site was fraught with problems. This was one more nail in its coffin. To not do the right thing spoke loud and clear that the Council did not have the courage to do it. She wanted to see the Council stand together for once and make the right decision and act with integrity.

Mayor Bernard heard the suggestion that the Council did not act with integrity. The Council did. It was not a simple decision. He agreed that the issue needed to be

debated. He would be satisfied to set this aside and discuss the matter in a work session. He had grave concerns about the matter, but to say the Council had not acted ethically or seriously considered the issue was totally wrong. It was a misconception Councilor Stone seemed to have. He was willing to talk about the matter more. He felt the City Manager still needed to talk with Ms. Swanson.

Councilor Stone had not implied that the Council did not act with integrity. The Council had a chance to do that publicly. In terms of talking to Ms. Swanson, the only reason for doing that was to change her mind and her intent. That was the crux of what was wrong. That was the heart of it. We do not under any circumstances need to change her mind. The intent was clear. Her husband's intent was obviously clear. He was no longer able to speak for himself, so she did not see how anybody could.

Councilor Barnes called for the question.

Councilor Stone thought the Council really needed to move on and do the right thing tonight.

Mayor Bernard said the motion was put aside unless someone wanted to make a motion otherwise.

Councilor Collette moved the have the vote at this meeting. The City was not asking for a decision for or against the transit center. The decision was in two parts. The first was the matter of naming something after Mr. Kronberg, which was easy. The City could sit down with Ms. Swanson and find out what she wanted named after him. The second question was if the City Manager should clarify her intent – what she wanted to see happen at that site. Her understanding was that Ms. Swanson was excited and would be fine with having the transit center there. It seemed that Mr. Kronberg had tried to deal repeatedly with the kind of opposition seen with the transit center site. She felt a certain amount of solidarity on the issue. This was not a vote on the transit center; that was done last year. This was a vote on whether to talk with Ms. Swanson to find out what she wanted from the situation. Fourteen years have gone by, and Mr. Bartlett set up the City in a bad situation. Councilor Stone and Councilor Loomis might be right that if the City had been aware of that document earlier, then the Working Group might have been directed otherwise. The fact was that after months of work the Working Group looked at nine alternatives and came up with what it felt was the best alternative. There was a consensus vote. The Planning Commission voted. The City Council voted. All that was being considered was the opportunity to go back to Ms. Swanson who sold the property and clarify her wishes on the site. She thought the City Council should be able to make that vote without postponing it. If it was voted down, then so be it. It was a decision the City Council could make. Her motion was to have the vote at this meeting.

Councilor Loomis seconded the motion.

Councilor Stone said it was not about Ms. Swanson but the donation made as a couple to the citizens. Don't forget that. Taxpayer dollars bought that park. In Milwaukie there were 78 acres of park space. There were 150 acres of private green space and 50 acres of school grounds space. That left Milwaukie with 278 acres and Metro said the City needed 450 acres. Where was the City going to get 122 more acres? Milwaukie was built out; it did not have it. Why would we want to challenge

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somebody's legal, binding agreement, a gift to our citizens. She would feel robbed as a citizen if the Council did anything other than honor this agreement. Had the former City Manager done diligence, this conversation would not be happening. The transit center idea would have never gone south of the City. The Council needed to do the right thing. The document was found, and now the Council needed to act accordingly and step up to the plate together and honor the document and put the matter to rest. It was the right thing to do.

Councilor Loomis thought it was clear what Mr. and Mrs. Swanson wanted. It was in the letter. It did matter what she wanted, and he was sure she would be more than happy if it was a park and named after him. He did not think she would object or yell and scream at the Council. The decision was made in 1991. He thought of his father who was 85 and being pressed and lobbied from all sides. He did not think it was necessary. It was in the letter.

Councilor Stone added the Council should not put her through it.

Mr. Firestone understood there was a motion made to have the vote that essentially amended the first motion. The first thing to vote on was whether or not to decide the main motion at this meeting. The motion was made and seconded.

Mayor Bernard asked to see the additional information from Mr. Lancaster. He agreed with Councilor Loomis and Councilor Stone that if this had been available, he would never have looked at Kellogg Lake. That did not mean the City should not speak with Ms. Swanson who was an intelligent woman. In any case, he hoped a surviving spouse could talk about a donation. He wanted to hear from her and did not want to make a big effort to convince her otherwise.

Mr. Firestone said the motion on the table was whether to vote on the substance at this meeting. The motion made concerning substance was to talk with her. The City Council could consider bifurcating the original substantive motion into two motions – one relating to naming and the other as to whether there would be any discussion with her. He believed the City had a parks naming process, but given the circumstances it might be difficult to come up with a definitive name tonight. The Council could direct that the process be commenced to name it in the memory of Mr. Kronberg.

Councilor Barnes called for the question of whether or not to vote on the substantive issue at this meeting.

Motion passed 4 – 1 with the following vote: Mayor Bernard and Councilors Collette, Loomis, and Stone 'aye' and Councilor Barnes 'no.'

Mr. Firestone said the original motion had two parts, naming and having the discussion.

Mayor Bernard wanted to separate those.

Councilor Stone asked if there needed to be a motion to give direction about talking with Ms. Swanson.

Mr. Firestone said it was originally made and seconded. It was unclear to him whether it was formally withdrawn or not. He suggested the motion could be restated.

Mayor Bernard said the original motion was to direct the City Manager to talk with Ms. Swanson the former property owner. The motion was seconded by Councilor Barnes.

Mr. Firestone did not hear any objection to that so recommended proceeding with the vote.

Ms. DuVal read the original motion, which was to discuss the situation with the property owner.

Councilor Stone would like to add, if that indeed was something the City was going to do, she would like this entire Council and this audience present when Ms. Swanson came here to discuss because she heard Mayor Bernard use the word convince. That would be the sole purpose for having a conversation with Ms. Swanson – to merely convince her that the City could still dedicate something to the name of her first husband Mr. Kronberg. It might not be a park. It might be a park or a parking lot. She frankly had a real ethical dilemma where that was concerned. This was clearly in violation of the original intent of the letter and violated her deceased husband as well as it violated the citizens. This was a gift that citizens paid for. This was a park. the only reason the City would be talking with Ms. Swanson was to convince her otherwise and that it could still put her husband's name on something. She could not do that. If the City was going to talk with Ms. Swanson, then all should talk to her. You can't get her alone and manipulate the situation to convince her otherwise. She thought that was what was going on. Frankly, that did not speak well of the City or the Council. This was not acting with integrity. Acting with integrity was honoring the agreement signed on December 30, 1991. The City signed it for the citizens. The intent was absolutely crystal clear. It was supposed to be park.

Councilor Loomis could feel Councilor Stone's passion, but there was no way he would bring Ms. Swanson into this arena. He thought the City Manager would do a fine job; he just disagreed with doing it. He was not unethical and would not get her in a closed room. His decision was based on other things. He fully trusted Mr. Swanson to act professionally, but he did not want to put her through any more. It was time to make good on the promise. She did not need to go through any more. She did not need to be involved. This was the Council's fiasco and its responsibility.

Mayor Bernard would have to agree with Councilor Loomis's comments. This was a change of his opinion. He got the feeling that there were others on Council thinking similar things. He would never have looked at this site if the letter had been there. It was a tough decision to select that site. He would probably vote 'no.'

Councilor Loomis saw no reason to talk to her other than ask what kind of park she wanted and send a letter of apology and an indication of how to make it happen.

Mayor Bernard wanted people to understand this would go back to Southgate. He would represent the City at the South Corridor Committee, and he needed this resolved. He did not think it could be done in a timely fashion to satisfy Ms. Swanson or anyone else.

Councilor Barnes commented one talked about integrity, and her first passion was to the residents of Milwaukie. She made a commitment with her vote when she made her

decision on the transit center. It was very clear to her as it had been over and over again that the Council's word in this community meant nothing for a very long time to the outside world because of the infighting, the arguments, the ego, ethics, and this screaming in the center yard – they were adults. She gave complete respect and had not shouted them down when they came forward to speak. She asked for her two minutes. She would be voting to stay the course and ask Mr. Swanson to step forward. She made the decision a long time ago that this Working Group was right and that the Planning Commission was right. She spent thousand of hours researching this issue for a reason – to make the right decision. She knew Councilor Loomis had also done that. She and Councilor Stone spent more time than many, and she was not going to give that up. Councilor Barnes's integrity and ethics were at stake. She made a decision based on fact. Not on gossip, not on cruelty, not on breaking ethics, not by going outside Council executive session to share information with others. She thought she knew what it took to be ethical. She was trying hard to remain that way because there was an issue of integrity for the City, and it was just put on the line. Right now from this point forward the people in Happy Valley and Clackamas County and Metro and TriMet will say, the City of Milwaukie hasn't changed. The Council was pressured into making a decision because a small group of very vocal people who did not represent the 21,000 residents had spoken too loudly tonight. That man's memory was just tarnished because everything he fought for according to his wife just came about again because of ten or twelve people who wanted to scream. That was the way she would vote.

Mayor Bernard said the President was fighting a war because of WMD, but none were found. The war was still being fought. As far as he was concerned, this issue was a WMD. The City needed to change the path, and he could still bring this process to a good conclusion that was beneficial to the City. He thought people needed to look at the first decision. There was a light rail station at 21st Avenue and Washington Street, and that was what he heard people say they wanted. He would fight at South Corridor to have that transit stop behind Milwaukie Lumber. He wished the Council had had this agreement a long time ago. He too blamed Mr. Bartlett and thought it might have been done outside of the Council meeting. There were no restrictions on the deed.

Councilor Collette said this had been a real trial for the whole community, and everyone weighed in for their various reasons. Those who worked on the Working Group believed then and believed now that the Kellogg Lake site was really the best site for the City for all the reasons discussed for the past couple of years. She first heard about the letter in the Council executive session. Her first thought was if this was the case, then the project would have to be moved. She would like to hear Ms. Swanson's feelings on the project. Councilor Collette understood Mr. Kronberg had been opposed over and over by the vocal minority. She understood Ms. Swanson would be happy to do something that resulted in progress for Milwaukie. With that understanding the Councilor wished to move forward and to have that conversation with Ms. Swanson and give her the opportunity to do what she intended which was to contribute something to the City. She was very sad that it did not sound as if the vote would allow that opportunity. On the other hand, this had been a nightmare and would continue to be a nightmare until and unless the site was developed. Councilor Collette would be happy to put the issue behind the Council and move forward although she did not think it was

the right thing to do. She would be content to let go of the project if that was what the people in this room wanted, and that appeared to be the case.

Mayor Bernard repeated the motion, which was to request that the City Manager speak with Ms. Swanson about clarifying the use of the site.

It was moved by Mayor Bernard and seconded by Councilor Loomis to request that the process commence to name the park to reflect the Kronberg name.

Councilor Stone understood it would be named Kronberg Park and that the four-letter word park would be in the motion. She understood that was the intent.

Councilor Loomis was not opposed to the City's talking with Ms. Swanson. He was opposed to talking to her about the transit center. He wanted to add to the motion that her input on this park and its naming should be sought.

Mayor Bernard accepted the amendment that was to talk with Ms. Swanson about the naming and use of the park.

Councilor Stone asked if it was specifically stated in the documents that it would be named Kronberg Park.

Mr. Firestone said the statement in the letter was that the City agreed to name the park to reflect the Kronberg name.

Councilor Stone said that was fine with her if that was stated in the motion. Councilor Stone seconded the motion. The motion passed unanimously. [5:0]

Councilor Stone asked if there was another motion pending. She asked if that took care of naming the site Kronberg Park.

Mr. Firestone said the City had a parks naming policy, and the motion was to direct the City to initiate the procedure to have the name Kronberg.

Councilor Stone asked if there needed to be a motion to not site the transit center on the Kellogg Lake site known in the future as the Kronberg Park site. That was her understanding of what the Council would do next.

Mr. Firestone thought it would be possible to make such a motion. Typically, a motion like that would be acted upon after more substantial input.

Councilor Stone moved, based on the documentation the Council received – the 1991 signed deed and agreement between the City and the Swanson's, to uphold the 1991 agreement and allocate the Kellogg Lake site as a park and to be named after the Kronberg name. Councilor Loomis seconded the motion.

Mayor Bernard would not vote in support of that motion as he thought it needed more discussion.

Councilor Stone asked how the City could uphold the agreement without allocating that site as a park. That was the intent of the agreement, and it was clearly stated it would be a park.

Mayor Bernard said the future discussions needed to include representatives from the North Industrial area.

Councilor Stone thought the Council was having this public hearing to clarify the use of the site and declare that site as a park.

Councilor Loomis thought the Council was meeting to decide what had already been decided. The idea of a work session was all right, but he was not prepared to vote on that motion. He thought the Council had done its work for this meeting and called for the vote.

Councilor Stone said the action requested by the City Manager in the staff report....

Mayor Bernard said Councilor Loomis had called for the vote.

Councilor Stone knew that was the procedure, but she still had a clarifying question. They were talking about the potential restriction, and that was what was being questioned. Was the document a restriction?

Mayor Bernard said Councilor Stone might make another motion, but there was a motion on the floor that had been seconded.

Motion failed 1 – 4 with the following vote: Councilor Stone voting ‘aye’ and Mayor Bernard and Councilors Barnes, Collette, and Loomis voting ‘no.’

Councilor Stone asked how it was the City could fulfill its duty at this meeting and consider how to proceed with this restriction. It was clearly stated in Oregon law that the companion document to the deed should be upheld. She was unclear why that was not being addressed.

Councilor Loomis was also unclear and thought there should be a work session to clarify the issues. The Council dealt with the business on the agenda, and it was time to move on to the next item.

Councilor Stone did not believe the Council did due diligence with this issue. What would be the plan from this point in terms of what the focus would be? Would it be at the next meeting?

Mayor Bernard said the matter would be scheduled for discussion at the next work session.

Councilor Stone asked what the potential action plan would be for the Council.

Councilor Loomis suggested communicating with the Mayor as he did not feel it needed to be discussed.

Councilor Stone asked if there was some reason why it could not be discussed at this time.

Councilor Loomis thought it was time to move on with the understanding it was not over. In his opinion it was done for this night.

Councilor Stone was happy to talk about the issue further, but she felt the Council did a piece of what the documentation addressed in terms of the naming of the park. She did not think the Council was fully addressing the issue. The Council should clarify what the use of the site would be.

Mayor Bernard felt there was consensus to move on to the next agenda item.

Councilor Stone did not agree.

Mayor Bernard called for a 5-minute recess.

OTHER BUSINESS

A. Tax Assessment

Mr. Swanson said the assessment issue had to do with the tax statements that were just mailed. Last week he noticed on the front page of the *Clackamas Review* an article about the increase in the City's tax rate based on annexation to the Fire District. The intention in proposing the annexation was that there be no increase in the tax rate. There was a point at which the City understood that the District's bonded debt would not be included. However, that was a mistake, and the assessor was correct. The City did make the commitment and would honor the commitment that taxes would not be raised. He was working on the problem but did not have any answers at this time. The message he wanted to leave was that the City knew there was an error for which he took responsibility. The City would find a solution and honor its commitment.

Mayor Bernard commented that he had asked District representatives to attend this meeting.

Mr. Swanson had suggested to them that they not attend. He discussed bonded debt and the assessor's translating the amount into a rate. The assessor appropriately applied the amount of the principal and interest payment to the assessed value. The District would not collect any more, but the individual rates to all the properties in the District were slightly less. He was willing to take responsibility so people could move on and solve the problem. Anyone with criticisms or complaints could level those at him.

Mayor Bernard said the City would lose \$169,000 over that \$.14/\$1,000. It was a small amount on the tax bill. People he talked to at the Farmers' Market said they did not want their money back. He and the City Manager talked to people about the annexation measure with the understanding there would be no tax increase. He wanted people to know the City did not lie but was misinformed. There were people who did not care to have their money back. He discussed the complexities of trying to refund taxpayers.

Mr. Swanson was trying to find a simple way for the City to honor its commitment.

Councilor Collette understood the rate was \$.14 per thousand, and taxpayers in the City as a whole were paying approximately \$169,000.

Mr. Swanson said the first bond issue would retire this December, so there would be a decrease of approximately \$370,000 in principal and interest payments. The other bond issue was for buildings and apparatus some of which directly served the City. Although that might be a great justification, the City made a promise that needed to be fulfilled. The tax statements were correct, and the City would figure out a way to make things good next year. The commitment to make the annexation tax neutral would be made up. In addition to the bond issue that was retiring this December, there was a second issue that he believed went to 2015. The problem would go away when that was paid off, but in the mean time, it had to be made right with Milwaukie taxpayers.

Mayor Bernard had heard a concern that someone selling their home would not get the benefit.

North Main Village

Mr. Swanson announced the documents would be signed later in the week, and Mr. Kemper would put up a fence on Friday that signaled the beginning of construction.

Other Items

Mayor Bernard felt the City made a contract, which was very important to him, and one of his basic principles was that a contract was a contract. He was concerned, however, that the Council broke its contract with the North Industrial businesses. He expected all those who spoke would work hard to make things work in that area. His biggest concern was with Harder Mechanical. He was somewhat disappointed with himself and had felt solid in his vote until Councilor Loomis went in an unexpected direction.

ADJOURNMENT

It was moved by Councilor Stone and seconded by Councilor Collette to adjourn the meeting. Motion passed unanimously

Mayor Bernard adjourned the regular session at 9:35 p.m.



Pat DuVal, Recorder

